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Feb 25 2021

February 25, 2021

STATE CLEARINGHOUSE

Randall Cates
Kern County Planning and Natural Resources Department
2700 "M" Street Suite 100
Bakersfield California, 93301

**Subject: AVEP Solar Project by Chaparral Solar, LLC and Rabbitbrush Solar, LLC
(Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2019090215**

Dear Mr. Cates:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the Kern County Planning and Natural Resources Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Chaparral Solar, LLC and Rabbitbrush Solar, LLC

Objective: a) Three (3) Specific Plan Amendments (SPA) to the Willow Springs Specific Plan to designations from 5.3/4.4 (Maximum 10 Units per Net Acre/Comprehensive Planning Area) to 5.3 (Maximum 10 Units per Net Acre) on 10 acres (SPA 1, Map 231-18), 5.3/4.4 (Maximum 10 Units per Net Acre/Comprehensive Planning Area) to 5.3 (Maximum 10 Units per Net Acre) on 591.96 acres and 5.3/4.4/2.1 (Maximum 10 Units per Net Acre/Comprehensive Planning Area/Seismic Hazard) to 5.3/2.1 (Maximum 10 Units per Net Acre/Seismic Hazard) on 72.15 acres (SPA 25, Map 232), and 5.3/4.4 (Maximum 10 Units per Net Acre/Comprehensive Planning Area) to 5.3 (Maximum 10 Units per Net Acre) on 40 acres (SPA 27, Map 232);

b) Three (3) Zoning Classification Changes (ZCC), from the existing Zone District of E (2 ½) RS FPS to A FPS on 10 acres (ZCC 3, Map 231- 18), from the existing Zone District of E (2 ½) RS FPS to A FPS on 120 acres (ZCC 40, Map 232), and from the existing Zone District of E (2 ½) RS FPS, E (5) RS FPS and E (10) RS FPS to A FPS on 222 acres (ZCC 41, Map 232);

c) Three (3) Conditional Use Permits (CUP), to allow for the construction and operation of a 125 megawatt solar photovoltaic electrical generating facility within the A (Exclusive Agriculture) zone district on the Chaparral Site (CUP 1, Map 231-18, and CUP 33, Map 232), and to allow for the construction and operation of a 125 megawatt solar photovoltaic

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electrical generating facility within in an A (Exclusive Agriculture) District on the Rabbitbrush Site (CUP 35, Map 232), pursuant to Section 19.12.030.G of the Kern County Zoning Ordinance;

d) Two (2) CUPs, each to allow for the construction and operation of a communication tower (Section 19.12.030.F) in an A District (CUP 34, Map 232; CUP 36, Map 232);

e) Two (2) requests for non-summary vacation of public access easements on the project site, one corresponding to each of the two solar facilities;

f) Three (3) Specific Plan Amendments to the Circulation Element of Willow Springs Specific Plan to remove Section and mid-section line road reservations as follows: 1) The portion of the Section line between Section 18, T9N, R13W and Section 13, T9N, R14W lying north of Truman Road, the south half of the Section line between Section 18, T9N, R13W and Section 7, T9N, R13W, lying west of property owned by the City of Los Angeles Department Water and Power (Specific Plan Amendment 2, Map 231-18); 2) The west quarter of the Section line between Section 13, T9N, R14W and Section 12, T9N, R14W, the east three quarters of the south half of the Section line between Section 13 T9N,R14W and Section 12 T9N/R14W; the east-west mid-section line of Section 13, T9N, R14W, the north-south mid-section line of Section 13, T9N, R14W; the east one-eighth of the south half of the east-west mid-section line of Section 14, T9N, R14W (Specific Plan Amendment 26, Map 232); 3) The south half of the north-south mid-section line of Section 10, T9N, R14W; the north half of the north-south mid-section line of Section 15, T9N, R14W; the north half of the east-west mid-section line of Section 15, T9N, R14W; the west half of the east half of the west half of the south half of the east-west mid-section line of Section 14, T9N, R14W (Specific Plan Amendment 28, Map 232).

g) The project's permanent facilities would include service roads, two communication towers, communication cables, overhead and underground transmission lines, and operations and maintenance facilities.

Location: The project site is located approximately 5.5 miles west of the unincorporated community of Rosamond; also, being located within portions of Section 18 of Township 9 North, Range 13 West, San Bernardino Base and Meridian (SBBM), and within portions of Sections 9, 10, 12, 13, 14 15, and 23 of Township 9 North, Range 14 West, SBBM, County of Kern, State of California.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County of Kern County Planning and Natural Resources Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

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There are special-status species that have been documented in the Project vicinity and may be present at individual Project sites in the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and Federally threatened desert tortoise (*Gopherus agassizii*); the State threatened Mojave ground squirrel (*Sturna antillarum browni*), and Swainson's Hawk (*Buteo swainsonii*), the State candidate for listing as threatened western Joshua tree (*Yucca brevifolia*), the State fully protected golden eagle (*Aquila chrysaetos*), and the State species of special concern LeConte's thrasher (*Toxostoma lecontei*), mountain plover (*Charadrius montanus*), long-eared owl (*Asio otus*) and loggerhead shrike (*Lanius ludovicianus*) and special status townsend's big-eared bat (*Corynorhinus townsendii*); as well as the desert kit fox (*Vulpes macrotis ssp. macrotis*), which is protected under California Code of Regulations (CCR), Title 14, Chapter 5, Section 460. Our specific recommendations follow.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Desert Tortoise

Issue: The Project site is within the range of desert tortoise and, based on aerial imagery, appears to contain suitable habitat. Desert tortoise are most common in desert scrub, desert wash, and Joshua tree habitats (CDFW, 2018). Section 4.2.3.1 of appendix E of the DEIR states that surveys were done from 2017 to 2019 and resulted in 100% visual coverage of all the proposed Project areas (Chaparral Solar, Rabbitbrush Solar, and Tumbleweed Solar). Based on the language in the DEIR, it appears that 100% visual coverage surveys of all three of the Project sites were not completed during a single individual calendar year. CDFW generally recognizes desert tortoise surveys to be valid for 1-2 years. Therefore, due to the time elapsed between when surveys were conducted and the release for public review of the DEIR, CDFW cannot conclude that desert survey results are currently valid and that desert tortoise are absent from the Project site.

Specific impact: Potentially significant impacts that may result from Project-related activities include loss of foraging habitat, habitat degradation and fragmentation, burrow destruction, and direct mortality.

Evidence impact is potentially significant: Human impacts to desert tortoise include habitat conversion to agriculture, energy development, and urban lands, degradation of habitat by off-highway vehicles (OHV), intentional killing of tortoises, and killing by cars

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and OHV (Doak, Kareiva, Kleptka, 1994). Habitat conversion to agriculture results in the loss of habitat and may lead to an increase in the predator raven population, drawdown of water table, introduction of pesticides and other toxic chemicals, and the potential introduction of invasive plants (Boarman, 2002). Project activities may result in the loss of potential desert tortoise habitat through conversion and may increase habitat fragmentation.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to desert tortoise, CDFW recommends including the following changes to the EIR.

Mitigation Measure (MM) 4.4-6: Preconstruction Desert Tortoise Surveys

Given that desert tortoise surveys did not cover 100% of the three Project sites in 2019, CDFW recommends that preconstruction surveys required by MM 4.4-6 clearly state they will cover 100% of the Project area. CDFW recommends these surveys be conducted by a qualified wildlife biologist who has previous experience surveying for desert tortoise using survey protocols outlined in "Preparing for any action that may occur within the range of the Mojave Desert tortoise (*Gopherus agassizii*)" (USFWS, 2010). Survey results are advised to be submitted to both CDFW and the USFWS.

In addition, MM 4.4-6 states that if desert tortoises or their burrows are identified on the Project site during preconstruction surveys, the Project operator shall be required to consult with USFWS and CDFW regarding take coverage. If desert tortoise is found within the Project area during surveys or construction activities, all ground- and vegetation-disturbing should stop to avoid unauthorized take of the species and not resume until consultation with CDFW is complete it is determined if the Project can avoid take. If avoidance is not feasible, acquisition of an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) prior to any vegetation- or ground-disturbing activities is necessary to comply with CESA. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

COMMENT 2: Mohave Ground Squirrel (MGS)

Issue: Appendix E section 3.2.3.12 of the EIR states that the Project is 11 miles outside the known range for MGS (as described in Leitner 2015), and therefore, surveys are not warranted because the CDFW recommended protocol states that surveys should be conducted within 5 miles of the boundary of the geographic range of the species. However, it is important to note that reports of MGS sightings have been verified beyond where they have been recently expected to occur (e.g., Canebrake Ecological Reserve – Ferranti 2021, pers. comm.). The 5-mile survey suggestion is a recommendation and CDFW advises that a Project proceeds at its own risk whenever suitable habitat features are present and surveys were not conducted.

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Specific impact: Without appropriate avoidance and minimization measure for MGS, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, and mortality of individuals.

Evidence impact is potentially significant: Major threats to MGS are drought, habitat destruction, habitat fragmentation, and habitat degradation (Gustafson, 1993). MGS is restricted to a small geographic range and the greatest habitat loss has occurred near desert towns including California City (Gustafson, 1993). Natural cycling is anticipated in MGS populations therefore the true indicators of the status of the species are the quantity, pattern of distribution, and quality of habitat (Gustafson, 1993). Project activities may result in the loss of potential MGS habitat through conversion and may increase habitat fragmentation.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to MGS, CDFW recommends including the following measure in the EIR.

Recommended Additional Mitigation Measure 1: MGS Take Authorization

Due to what appears to be a major expansion into its historical range, CDFW recommends that a qualified biologist, with appropriate permits, conduct protocol surveys for MGS following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG, 2003) during the appropriate survey season and that these surveys be conducted in areas of potential habitat, including marginal habitat covering the entire Project site, including the gen-tie line and collection line corridors. Because of the large size of the Project site, CDFW recommends the Project applicant propose a surveying methodology that includes use of remote camera stations. CDFW recommends submittal of the proposed survey methodology to CDFW for review and approval prior to implementation, to avoid expenditure of funds on an inadequate survey effort. We also recommend that the results of these surveys be submitted to CDFW for evaluation. If MGS are found within the Project area during protocol level surveys, preconstruction surveys or construction activities, CDFW recommends that all ground- and vegetation-disturbing activities stop and consultation with CDFW occur to discuss how to implement the Project and avoid take. If avoidance is not feasible, acquisition of an ITP pursuant to Fish and Game Code section 2081 subdivision (b) prior to any ground- or vegetation-disturbing activities to comply with CESA is warranted. Any take of MGS without take authorization would be a violation of Fish and Game Code section 2080.

COMMENT 3: Swainson's Hawk (SWHA)

Issue: Appendix E section 4.1.5 of the EIR states that Swainson's Hawk surveys were conducted in 2017 and 2018 according to the Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (CEC and CDFG 2010).

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It also states that only a single survey was warranted in 2019. The survey guidelines require that at least two surveys be conducted, with each of the two surveys to be done in separate nesting periods. The DEIR offers no explanation why a single survey was warranted. The survey protocol states “surveys should be repeated within the 5 mile radius if a survey season ensues or elapses before the onset of project related activities.” Given that the last protocol surveys were conducted in 2018, additional surveys seem warranted. Appendix E section 5.1.2.5 of the EIR states that three active nests were detected within the five-mile survey area of the Project site. The survey protocol states that a nest is considered active for five years after a sighting.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for SWHA is present throughout the Project site, CDFW recommends including the following changes to the EIR.

Mitigation Measure (MM) 4.4-8: Nesting Birds and Raptors

Mitigation Measure 4.4-8 requires preconstruction surveys for SWHA 14 days prior to the start of Project activities. The Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California states “To meet the minimum level of protection for the species, surveys should be completed for at least the two survey periods immediately prior to a project’s initiation. For example, if a project is scheduled to begin on June 1, you should complete three surveys in Period II and three surveys in Period III.” Therefore, CDFW recommends that a qualified wildlife biologist conduct surveys for at least two survey periods immediately prior to Project implementation as described in the survey protocol. CDFW has no objection to additional preconstruction surveys prior to construction, but they do not provide the same certainty as the recommended protocol. The recommended survey protocol includes early season surveys to provide the best opportunity to identify SWHA nests and maximize the amount of time prior ground-disturbing activities to adequately implement necessary avoidance and minimization measures. CDFW recommends these surveys for all construction related activities that have the potential to disturb

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nesting SWHA, including construction, operations and maintenance, and decommissioning.

Recommended Additional Mitigation Measure 2: SWHA Take Authorization

MM 4.4-8 also states that a no disturbance buffer of 0.5-mile to be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. CDFW recommends that in the event an active SWHA nest is detected during surveys and the 0.5-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Similar to surveys above, CDFW recommends no-disturbance buffers and take authorization consultations for all Project activities including construction, operations and maintenance, and decommissioning.

Recommended Additional Mitigation Measure 3: SWHA Monitoring and Mitigation Plan

If a Swainson's hawk nest is detected within 5 miles of the Project, CDFW recommends the Project operator develop a Swainson's hawk monitoring and mitigation plan in consultation with CDFW as described in Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. Any monitoring criteria, if necessary, will likely vary based on proximity to the Project area.

Recommended Additional Mitigation Measure 4: SWHA Foraging Habitat

CDFW recommends that the Project mitigate the loss of suitable habitat within 5 miles of the above mentioned active nests, and any additional nests identified by surveys conducted as part of Recommended Additional Mitigation Measure 4, at a 2:1 ratio in accordance with Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California to reduce impacts to SWHA foraging habitat to less than significant. The entire Project site appears to be suitable SWHA foraging habitat based on available aerial imagery. Therefore, CDFW recommends that any portion of the Project area within 5 miles of an active SWHA nest provide habitat compensation at a 2:1 ratio. CDFW recommends that habitat compensation lands follow the recommendations for Habitat Management (HM) Lands described in the survey protocol.

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Recommended Additional Mitigation Measure 5: SWHA Nest Tree Replacement

CDFW advises that the removal of known SWHA nest trees, even outside of the nesting season, is a potentially significant impact. Therefore, CDFW recommends that any known SWHA nest tree that is removed as part of Project activities be replaced with an appropriate replacement tree species planting at a ratio of 3:1 at or near the Project site or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

COMMENT 4: Special-Status Plant Species

Issue: Section 3.2.2 of appendix E of the EIR states western Joshua tree occur within the Project site and the surrounding area. The DEIR states “western Joshua trees and protected cactus occur throughout the project site and removal will be mitigated, as applicable by obtaining a harvest permit, creation and submittal/approval of a Joshua Tree Preservation plan, and adherence to applicable State (CDFW) protection and mitigation requirements.” Western Joshua tree is currently a candidate for listing as threatened pursuant to CESA and as such take of the species, including any translocation, would require acquisition of an ITP to be in compliance with CESA. Additionally, the proposed preconstruction botanical surveys may not be adequate to detect special status plant species, which may impede the ability to implement other mitigation measures (e.g., buffers) and subsequently not reduce impact significance.

Specific impact: Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Special-status plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends the following changes to the EIR.

Mitigation Measure (MM) 4.4-5: Preconstruction Special-Status Plant Surveys

MM 4.4-5 states that surveys for special status plants will occur no more than 14 days prior to the start of Project activities. The appropriate timing for plant surveys is dependent on the individual species and seasonal conditions. Surveys conducted 14 days prior to the start of Project activities may not be conducted at the appropriate time to detect all the special-status plant species that have the potential to occur in the

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Project area. If species are not accurately identified or specific locations are not detected, the buffers proposed as part of MM 4.4-5 cannot be effectively implemented. CDFW recommends the Project area be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities” (CDFW 2018) during the appropriate season immediately prior to the start of Project. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary. In addition, CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species rather than the 25 feet proposed in MM 4.4-5.

Recommended Additional Mitigation Measure 6: Western Joshua Tree Buffers

Based on MM 4.4-5, the Project operator intends to remove western Joshua trees from the Project area. As previously stated, western Joshua tree is a candidate for listing pursuant to CESA and take of the species is currently prohibited without take authorization obtained through the acquisition of an ITP pursuant to Fish and Game Code section 2081 subdivision (b). If the Project will pursue an ITP, please refer to Recommended Additional Mitigation Measure 7 below. If the Project operator elects to avoid western Joshua trees rather than obtain an ITP, CDFW recommends a no-disturbance buffer for individual western Joshua trees of 290 feet. A 290-foot buffer is warranted to not only avoid impacts to individual trees, but potential impacts to the seed bank as well. The no-disturbance buffer is based on the documented 290 feet as the maximum distance of seeds dispersed carried by rodents (Vander Wall et. al. 2006). Based on the density and distribution of western Joshua tree in the DEIR, CDFW does not believe that full avoidance of western Joshua tree and its seed bank is feasible or possible. Therefore, CDFW advises that the project consult with CDFW to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b) prior to any vegetation- or ground-disturbance activities.

Recommended Mitigation Measure 7: Special-Status Plant Take Authorization

As stated above, western Joshua tree occurs throughout the Project area and trees will be removed as part of Project activities. MM 4.4-5 states that the Project will “pay the required fee to remove Joshua trees, cholla, and beavertail cactus in accordance with the California Desert Native Plant Act prior to construction activities.” Be advised that this fee does not provide take authorization for western Joshua tree or other plant species listed pursuant to CESA. Removal of western Joshua tree without take authorization through the acquisition of an ITP is a violation of Fish and Game Code. Therefore, consultation with CDFW is warranted to discuss take authorization for this species through issuance of an ITP to comply with CESA. If another State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to

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determine if the Project can avoid take of that species. If take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

COMMENT 5: Special-Status Bat Species

Issue: Townsend's big-eared bat and other special status bats have been documented to occur near the Project vicinity (CDFW 2021). In addition, foraging habitat suitable for the species is present throughout the Project area.

Specific impact: Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: Townsends and other bats are known to roost under bridges (Lewis 1994 and Gruver 2006). Project activities on or around bridges have the potential to affect habitat upon which special-status bat species depend on for successful breeding, and the potential to impact individuals and local populations.

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommends editing the EIR include the following measures and that these be made conditions of approval for the Project.

Recommended Additional Mitigation Measure 8: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation to determine if an individual Project site or its immediate vicinity contains suitable habitat for special-status bat species.

Recommended Additional Mitigation Measure 9: Focused Bat Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of special-status bats by conducting protocol-level surveys during the appropriate seasonal period of bat activity.

Recommended Additional Mitigation Measure 10: Bat Consultation

Detection of special-status bat species warrants consultation with CDFW prior to any activity that may disturb bats. CDFW recommends submitting a Bat Eviction Plan to CDFW for written approval prior to project implementation, and that the Eviction Plan

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include details for excluding bats from the roost site, and a monitoring plan to ensure that all bats have exited the roost prior to the start of activity and will be unable to re-enter the roost until activity is completed. CDFW also recommends that Project or bat eviction activities be timed to avoid lactation and young rearing.

COMMENT 6: Other Species of Special Concern

Issue: LeConte's thrasher, loggerhead shrike, mountain plover, and long-eared owl have the potential to occur in the project area. These species have been documented near the area and suitable habitat exists within the project area (CNDDDB 2021).

Specific impact: Without appropriate avoidance and minimization measures for these special status species potentially significant impacts associated with the Project's activities could include site abandonment which may result in reduced health or vigor of eggs and/or young, and/or direct mortality.

Evidence impact is potentially significant: The Project area has the capacity to support the species and thus, subsequent ground-disturbing activities involved with the Project have the potential to impact the species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to these special status species, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Additional Mitigation Measure 11: Species Specific Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for each of these species and their requisite habitat features using the appropriate survey protocol to evaluate potential impacts resulting from Project-related activities.

Recommended Mitigation Measure 12: Special-Status Species Avoidance

Avoidance whenever possible is encouraged via delineation however, a qualified biologist with the appropriate handling permit may relocate special status species out of the project area into a nearby area with suitable habitat.

II. Editorial Comments and/or Suggestions

Desert Kit Fox: Desert kit fox (*Vulpes macrotis arsipus*) is protected under the California Code of Regulations, Chapter 5, section 460, which prohibits "take" of the species for any reason. In addition to requirements for desert kit fox listed in Mitigation Measures 4.4-2, 4.4-3, and 4.4.-4, CDFW recommends that no den excavation occur during the pupping season. Kit fox are known to use multiple dens during this time and vacant dens may be

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needed when kit fox relocate their pups. If any pupping dens are found on the Project site, consultation with CDFW is warranted for guidance on take avoidance measures for the desert kit fox.

Golden Eagle: Golden eagle (*Aquila chrysaetos*) is a fully protected species in California and is granted further protection under the federal BGEPA thus, if any active or potential nests are detected within 0.5 mile of the Project area consultation is required with CDFW to determine the measures to be implemented for full avoidance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, desert tortoise, desert kit fox, and golden eagle. Take under FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

Nesting birds: CDFW encourages Project implementation at individual Project sites occur during the bird non-nesting season if suitable nesting bird habitat is present. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project's applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds if suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there is compelling biological or ecological reason to

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do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

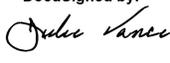
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the Kern County Planning and Natural Resources Department in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 291, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment

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cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 9582

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PERSONAL COMMUNICATIONS

Ferranti, Annee. Mohave ground squirrel confirmed at Canebrake Ecological Reserve. February 22, 2020. Phone call.

Attachment 1

**MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED ADDITIONAL MITIGATION MEASURES**

**PROJECT: AVEP Solar
SCH No.: 2019090215**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Additional Mitigation Measure 1: MGS Take Authorization	
Additional Mitigation Measure 2: SWHA Take Authorization	
Additional Mitigation Measure 3: SWHA Monitoring and Mitigation Plan	
Additional Mitigation Measure 4: SWHA Foraging Habitat	
Additional Mitigation Measure 5: SWHA Nest Tree Replacement	
Additional Mitigation Measure 7: Special-Status Plant Take Authorization	
Additional Mitigation Measure 8: Habitat Assessment	
Mitigation Measure 9: Focused Bat Surveys	
Additional Mitigation Measure 10: Bat Consultation	
Additional Mitigation Measure 11: Species Specific Surveys	
<i>During Construction</i>	
Additional Mitigation Measure 6: Joshua Tree Buffer	
Additional Mitigation Measure 12: Special-Status Species Avoidance	